

EXECUTION

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE TESLA, INC. SECURITIES  
LITIGATION

Case No. 3:18-cv-04865-EMC

CLASS ACTION

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

**EXECUTION**

1        This Stipulated Protective Order (“Order”) is meant to govern the use of, and protect from  
 2 public disclosure, any non-public and confidential or proprietary or private information used or  
 3 disclosed in this litigation.

4        **1. PURPOSES AND LIMITATIONS**

5        Disclosure and discovery activity in this action are likely to involve production of  
 6 confidential, proprietary, or private information for which special protection from public  
 7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 10 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 11 and use extends only to the limited information or items that are entitled to confidential treatment  
 12 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,  
 13 below, that this Stipulated Protective Order does not entitle them to file confidential information  
 14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards  
 15 that will be applied when a party seeks permission from the court to file material under seal.

16        **2. DEFINITIONS**

17        2.1        Challenging Party: a Party or Non-Party that challenges the designation of  
 18 information or items under this Order.

19        2.2        “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
 21 of Civil Procedure 26(c) and other proprietary or private information warranting special  
 22 protection from public disclosure and from use for purposes other than prosecuting this litigation.

23        2.3        Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as  
 24 well as their support staff).

25        2.4        Designating Party: a Party or Non-Party that designates information or items  
 26 produced in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
 27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

28        2.5        Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among other things,  
 2 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 3 responses to discovery in this matter.

4       2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
 5 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
 6 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
 7 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
 8 or of a Party's competitor.

9       2.7    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
 10 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
 11 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
 12 less restrictive means.

13       2.8    In-House Counsel: attorneys who are employees of a party to this action. In-House  
 14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15       2.9    Non-Party: any natural person, partnership, corporation, association, or other legal  
 16 entity not named as a Party to this action.

17       2.10   Outside Counsel of Record: attorneys who are not employees of a party to this  
 18 action but are retained to represent or advise a party to this action and have appeared in this action  
 19 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20       2.11   Party: any party to this action, including all of its officers, directors, employees,  
 21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22       2.12   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 23 Material in this action.

24       2.13   Professional Vendors: persons or entities that provide litigation support services  
 25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 26 organizing, storing, or retrieving data in any form or medium) and their employees and  
 27 subcontractors.

28       2.14   Protected Material: any Disclosure or Discovery Material that is designated as

1 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
3 Producing Party.

4 **3. SCOPE**

5       The protections conferred by this Stipulation and Order cover not only Protected Material  
6 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
7 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
9 However, the protections conferred by this Stipulation and Order do not cover the following  
10 information: (a) any information that is in the public domain at the time of disclosure to a  
11 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
12 a result of publication not involving a violation of this Order, including becoming part of the  
13 public record through trial or otherwise; and (b) any information known to the Receiving Party  
14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
15 obtained the information lawfully and under no obligation of confidentiality to the Designating  
16 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

17 **4. DURATION**

18       Even after final disposition of this litigation, the confidentiality obligations imposed by  
19 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
20 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
21 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
22 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
23 including the time limits for filing any motions or applications for extension of time pursuant to  
24 applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26       5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
27 or Non-Party that designates information or items for protection under this Order must take care  
28 to limit any such designation to specific material that qualifies under the appropriate standards.

1 To the extent it is practical to do so, the Designating Party must designate for protection only  
 2 those parts of material, documents, items, or oral or written communications that qualify – so that  
 3 other portions of the material, documents, items, or communications for which protection is not  
 4 warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are generally prohibited. Designations  
 6 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 7 unnecessarily encumber or retard the case development process or to impose unnecessary  
 8 expenses and burdens on other parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated  
 10 for protection do not qualify for protection at all or do not qualify for the level of protection  
 11 initially asserted, that Designating Party must promptly notify all other Parties that it is  
 12 withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 14 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
 15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
 16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but  
 19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
 20 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 21 ONLY” to each page that contains protected material. To the extent it is practicable to do so, if  
 22 only a portion or portions of the material on a page qualifies for protection, the Producing Party  
 23 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
 24 margins) and must specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for inspection  
 26 need not designate them for protection until after the inspecting Party has indicated which material  
 27 it would like copied and produced. During the inspection and before the designation, all of the  
 28 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants  
2 copied and produced, the Producing Party must determine which documents, or portions thereof,  
3 qualify for protection under this Order. Then, before producing the specified documents, the  
4 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY  
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected  
6 Material. If only a portion or portions of the material on a page qualifies for protection, the  
7 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
8 markings in the margins) and must specify, for each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
10 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
11 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
12 impractical to identify separately each portion of testimony that is entitled to protection, a Party  
13 or the Designating Party may invoke on the record (before the deposition, hearing, or other  
14 proceeding is concluded) a right to have up to 30 days after receipt of the transcript of the  
15 testimony in which to identify the specific portions of the testimony as to which protection is  
16 sought and to specify the level of protection being asserted. Only those portions of the testimony  
17 that are appropriately designated for protection within the 30 days shall be covered by the  
18 provisions of this Order. Alternatively, a Designating Party may specify, at the deposition or up  
19 to 30 days after receipt of the transcript of the testimony, if that right is properly invoked, that the  
20 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY.”

22 Parties shall give the other parties notice if they reasonably expect a deposition, hearing  
23 or other proceeding to include Protected Material so that the other parties can ensure that only  
24 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
26 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
27 – ATTORNEYS’ EYES ONLY.”

28 Transcripts containing Protected Material shall have an obvious legend on the title page

1 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
2 pages (including line numbers as appropriate) that have been designated as Protected Material  
3 and the level of protection being asserted by the Designating Party. The Designating Party shall  
4 inform the court reporter of these requirements. Any transcript that is prepared before the  
5 expiration of the 30-day period for designation shall be treated during that period as if it had been  
6 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
7 otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually  
8 designated.

9 (c) for information produced in some form other than documentary and for any  
10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
11 container or containers in which the information or item is stored the legend "CONFIDENTIAL"  
12 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". If only a portion or portions  
13 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
14 identify the protected portion(s) and specify the level of protection being asserted.

15 (d) for information requiring production in native or non-documentary electronic  
16 form (e.g., a database): by its nature, certain electronic information is impracticable to designate  
17 for confidentiality on a document or item by item basis. In such instances, the producing Party  
18 shall therefore affix in a prominent place on the exterior of the container or containers within  
19 which the electronic information is stored or transmitted (e.g., a physical CD-ROM or hard disk  
20 drive) the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY.” The Receiving Party shall mark any documents it prints from such designated files  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” – as  
23 designated - and treat them as such, in accordance with the provisions of this Order.

24        5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
25 designate qualified information or items does not, standing alone, waive the Designating Party's  
26 right to secure protection under this Order for such material. Upon timely correction of a  
27 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
28 in accordance with the provisions of this Order.

1       6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2       6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 3     confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
 4     designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 5     burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 6     challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 7     original designation is disclosed.

8       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 9     process by providing written notice (which may be accomplished via email) of each designation  
 10    it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a  
 11    challenge has been made, the written notice must recite that the challenge to confidentiality is  
 12    being made in accordance with this specific paragraph of the Order. The parties shall attempt to  
 13    resolve each challenge in good faith and must begin the process by conferring directly (in voice  
 14    to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of  
 15    service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
 16    confidentiality designation was not proper and must give the Designating Party an opportunity to  
 17    review the designated material, to reconsider the circumstances, and, if no change in designation  
 18    is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
 19    the next stage of the challenge process only if it has engaged in this meet and confer process first  
 20    or establishes that the Designating Party is unwilling to participate in the meet and confer process  
 21    in a timely manner.

22       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
 23     intervention, and the Challenging Party still seeks to pursue a challenge to a confidentiality  
 24     designation after considering the justification offered by the Designating Party, the Challenging  
 25     Party shall serve written notice (which may be accomplished via email), in accordance with this  
 26     specific paragraph of the Order, identifying for the Designating Party the specific material that  
 27     remains subject to the challenge. The Designating Party shall file and serve a motion to retain  
 28     confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if

1 applicable) within 21 days of receiving such notice or within 14 days of the parties agreeing that  
 2 the meet and confer process will not resolve their dispute, whichever is earlier.<sup>1</sup> Each such motion  
 3 must be accompanied by a competent declaration affirming that the movant has complied with  
 4 the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating  
 5 Party to make such a motion including the required declaration within 21 days of notice (or 14  
 6 days, if applicable) shall automatically waive the confidentiality designation for each challenged  
 7 designation. In addition, the Challenging Party may file a motion challenging a confidentiality  
 8 designation at any time if there is good cause for doing so, including a challenge to the designation  
 9 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
 10 must be accompanied by a competent declaration affirming that the movant has complied with  
 11 the meet and confer requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 13 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 15 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 16 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 17 material in question the level of protection to which it is entitled under the Producing Party's  
 18 designation until the court rules on the challenge.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 21 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
 23 to the categories of persons and under the conditions described in this Order. When the litigation  
 24 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
 25 (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and

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27 <sup>1</sup> After three challenges, the burden to move is on the Challenging party to avoid an abuse of the  
 28 process. The burden of persuasion remains on the Designating Party.

1 in a secure manner<sup>2</sup> that ensures that access is limited to the persons authorized under this Order.

2       7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
3 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
4 information or item designated “CONFIDENTIAL” only to:

5                 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
8 Bound” that is attached hereto as Exhibit A;

9                 (b) the officers, directors, and employees (including In-House Counsel) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12                 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
14 Agreement to Be Bound” (Exhibit A);

15                 (d) the court and its personnel;

16                 (e) court reporters and their staff, professional jury or trial consultants, and  
17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19                 (f) during their depositions, witnesses in the action to whom disclosure is  
20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
21 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
22 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
23 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
24 under this Order; and

25                 (g) the author or recipient of a document containing the information or a custodian  
26 or other person who otherwise possessed or knew the information.

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28       <sup>2</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any  
electronic Protected Material in password-protected form.

1           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2     Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
 3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5                 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
 6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
 8 Bound” that is attached hereto as Exhibit A;

9                 (b) Designated In-House Counsel of the Receiving Party (1) who has no  
 10 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for  
 11 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
 12 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

13                 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
 14 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
 15 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
 16 followed;

17                 (d) the court and its personnel;

18                 (e) court reporters and their staff, professional jury or trial consultants, and  
 19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
 20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21                 (f) the author or recipient of a document containing the information or a custodian  
 22 or other person who otherwise possessed or knew the information.

23           7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
 24 – ATTORNEYS’ EYES ONLY” Information or Items to Designated In-House Counsel or  
 25 Experts.

26                 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
 27 Designating Party, a Party that seeks to disclose to Designated In-House Counsel any information  
 28 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party (which  
2 may be accomplished via email) that (1) sets forth the full name of the Designated In-House  
3 Counsel and the city and state of his or her residence, and (2) describes the Designated In-House  
4 Counsel's current and reasonably foreseeable future primary job duties and responsibilities in  
5 sufficient detail to determine if In-House Counsel is involved, or may become involved, in any  
6 competitive decision-making.

7 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
8 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
9 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
10 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating  
11 Party (which may be accomplished via email) that (1) identifies the general categories of  
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving  
13 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the  
14 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,  
15 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the  
16 Expert has received compensation or funding for work in his or her areas of expertise or to whom  
17 the expert has provided professional services, including in connection with a litigation, at any  
18 time during the preceding five years, and (6) identifies (by name and number of the case, filing  
19 date, and location of court) any litigation in connection with which the Expert has offered expert  
20 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
21 preceding five years.<sup>3</sup>

22 (b) A Party that makes a request and provides the information specified in the  
23 preceding respective paragraphs may disclose the subject Protected Material to the identified  
24 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
25 receives a written objection (which may be accomplished via email) from the Designating Party.

27       <sup>3</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain  
28 limited work prior to the termination of the litigation that could foreseeably result in an improper  
use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
information.

1 Any such objection must set forth in detail the grounds on which it is based.

2 (c) A Party that receives a timely written objection must meet and confer with the  
 3 Designating Party (through direct voice to voice dialogue, other forms of communication are not  
 4 sufficient) to try to resolve the matter by agreement within seven days of the written objection. If  
 5 no agreement is reached, the Party seeking to make the disclosure to Designated In-House  
 6 Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
 7 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
 8 motion must describe the circumstances with specificity, set forth in detail the reasons why the  
 9 disclosure to Designated In-House Counsel or the Expert is reasonably necessary, assess the risk  
 10 of harm that the disclosure would entail, and suggest any additional means that could be used to  
 11 reduce that risk. In addition, any such motion must be accompanied by a competent declaration  
 12 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content  
 13 of the meet and confer discussions) and setting forth the reasons advanced by the Designating  
 14 Party for its refusal to approve the disclosure.

15 In any such proceeding, the Party opposing disclosure to Designated In-House Counsel or  
 16 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
 17 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
 18 Material to its Designated In-House Counsel or Expert.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 20 **OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that  
 22 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"  
 23 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

24 (a) promptly notify in writing (by email, with receipt confirmed) the Designating  
 25 Party. Such notification shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue  
 27 in the other litigation that some or all of the material covered by the subpoena or order is subject  
 28 to this Order. Such notification shall include a copy of this Order; and

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11 9. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
12 **THIS LITIGATION**

18 (b) In the event that a Party is required, by a valid discovery request, to produce  
19 a Non-Party's confidential information in its possession, and the Party is subject to an agreement  
20 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

26 3. make the information requested available for inspection by the Non-Party.

27           <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect  
its confidentiality interests in the court from which the subpoena or order issued.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9                   If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
10 Protected Material to any person or in any circumstance not authorized under this Order, the  
11 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,  
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
14 this Order, and (d) request such person or persons to execute the “Acknowledgment and  
15 Agreement to Be Bound” that is attached hereto as Exhibit A.

16    **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
17    **PROTECTED MATERIAL**

18 If Discovery Material or other information subject to a claim of attorney-client privilege,  
19 work-product immunity, or any other applicable claim of privilege or immunity is inadvertently  
20 produced or otherwise disclosed to any Party or Non-Party, such production or disclosure shall in  
21 no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or  
22 immunity for such Discovery Material or other information. Discovery Material or other  
23 information subject to a claim of privilege or immunity must be returned as soon as it is  
24 discovered, without any need to show the production was inadvertent. The Receiving Party shall  
25 not use the inadvertently produced Discovery Material or other information for any purpose other  
26 than in connection with a motion to compel production in this matter.

<sup>5</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1       Upon request by the Producing Party pursuant to this Section, the Receiving Party shall  
 2 immediately return all copies of such document(s) or thing(s) and shall destroy any newly created  
 3 derivative document such as a summary or comment on the inadvertently produced information.  
 4 The Receiving Party may then move the court for an order compelling production of such  
 5 information, but the motion shall not assert as a ground for production the fact or circumstances  
 6 of the inadvertent production. If a claim is disputed, the Receiving Party shall not use or disclose  
 7 any Discovery Material or other information for which a claim of privilege or immunity is made  
 8 pursuant to this Section for any purpose or until the matter is resolved by agreement of the parties  
 9 or by a decision of the court.

10 **12. MISCELLANEOUS**

11       12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
 12 seek its modification by the court in the future.

13       12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
 14 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
 15 information or item on any ground not addressed in this Order. Similarly, no Party waives any  
 16 right to object on any ground to use in evidence of any of the material covered by this Order.

17       12.3 Filing Protected Material. Without written permission from the Designating Party  
 18 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
 19 the public record in this action any Protected Material. A Party that seeks to file under seal any  
 20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
 21 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
 22 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
 23 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
 24 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
 25 pursuant to Civil Local Rule 79-5(e) (concerning documents or information designated as  
 26 confidential by another Party or Non-Party) is denied by the court, then the Receiving Party may  
 27 file the Protected Material in the public record in accordance with Civil Local Rule 79-5(e)(2)  
 28 unless otherwise instructed by the court.

1    **13. FINAL DISPOSITION**

2                    Within 60 days after the final disposition of this action, as defined in Section 4  
 3 (DURATION), each Receiving Party must return all Protected Material to the Producing Party or  
 4 destroy such material. As used in this subdivision, “all Protected Material” includes all copies,  
 5 abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
 6 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
 7 must submit a written certification to the Producing Party (and, if not the same person or entity,  
 8 to the Designating Party) by the 60-day deadline that (1) identifies (by category, where  
 9 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
 10 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
 11 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
 12 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
 13 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
 14 reports, attorney work product, and consultant and expert work product, even if such materials  
 15 contain Protected Material. Any such archival copies that contain or constitute Protected Material  
 16 remain subject to this Protective Order as set forth in Section 4 (DURATION).

17                    IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18                    Dated: May 19, 2020

LEVI & KORSINSKY, LLP

19                    By: /s/ Adam M. Apton

20                    Adam M. Apton (CSB No. 316506)  
 21                    Adam C. McCall (CSB No. 302130)  
 22                    388 Market Street, Suite 1300  
 23                    San Francisco, CA 94111  
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26                    Nicholas I. Porritt (admitted *pro hac vice*)  
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31                    *Attorneys for Lead Plaintiff Glen Littleton and  
 32                    Lead Counsel for the Class*

1  
2 Dated: May 19, 2020

FENWICK & WEST LLP

3 By: /s/ Jennifer C. Bretan  
4 Jennifer C. Bretan

5 555 California Street, 12th Floor  
6 San Francisco, California 94104  
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9  
10 *Attorneys for Defendants Tesla, Inc., Elon Musk,  
11 Brad W. Buss, Robyn Denholm, Ira Ehrenpreis,  
12 Antonio J. Gracias, James Murdoch, Kimbal Musk,  
13 and Linda Johnson Rice*

14 Pursuant to Civil Local Rule No. 5-1(i)(3), all signatories concur in filing this Stipulated  
15 [Proposed] Protective Order.

16 Dated: May 19, 2020

17 By: /s/ Adam M. Apton  
18 Adam M. Apton

19 \*\*\*

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: \_\_\_\_\_

22 \_\_\_\_\_ Hon. Edward M. Chen  
23 United States District Judge

## **EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
5 read in its entirety and understand the Stipulated Protective Order that was issued by the United  
6 States District Court for the Northern District of California on \_\_\_\_\_, 2020 in the  
7 case of *In re Tesla, Inc. Securities Litigation*, Case No. 3:18-cv-04865-EMC (the “Order”). I  
8 agree to comply with and to be bound by all the terms of the Order and I understand and  
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
10 of contempt. I solemnly promise that I will not disclose in any manner any information or item  
11 that is subject to the Order to any person or entity except in strict compliance with the provisions  
12 of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for  
14 the Northern District of California for the purpose of enforcing the terms of the Order, even if  
15 such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of the Order.

21 | Date:

22 City and State where sworn and signed:

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
[signature]